

No. 09-3416

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

<p><b>FILED</b> Apr 14, 2009 LEONARD GREEN, Clerk</p>
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JOHN DEMJANJUK,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

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O R D E R

Before: KENNEDY, GIBBONS, and ROGERS, Circuit Judges.

The petitioner has filed today a petition for review and a motion for stay, seeking review of an order of the Board of Immigration Appeals (the “BIA”) that denies his motion to stay his removal to Germany pending consideration of a motion to reopen removal proceedings. The petitioner asserts that due to his medical condition and the fact that he faces arrest, incarceration, and trial in Germany, his removal at this time violates the Convention Against Torture. *See* 8 C.F.R. § 1208.18 (implementation of the Convention Against Torture). The Attorney General opposes the motion for a stay and argues that the court lacks jurisdiction to review the denial of a stay by the BIA.

The court has the discretion to grant a stay of removal pending consideration of a petition for review. *See* 8 U.S.C. § 1252(b)(3)(B). In ruling on a motion for a stay, the court applies the traditional four-part test governing injunctive relief. *Nwakanma v. Ashcroft*, 352 F.3d 325, 327 (6th Cir. 2003). The four factors — the petitioner’s likelihood of success on the merits and irreparable harm, the harm to others, and the public interest — are to be balanced. Upon due consideration of

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the motion for a stay and the opposition by the Attorney General, we conclude that a stay of removal is warranted. Because it is our understanding that the government may remove the petitioner later today, we are compelled to rule on the motion for a stay prior to addressing the jurisdictional concerns raised by the government.

The petitioner's motion for a stay of removal is **GRANTED**, pending further consideration of the matters presented by the petition and motion.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Leonard Green", written in a cursive style.

Leonard Green  
Clerk